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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 465

IN THE MATTER OF
CHICAGO RAPID TRANSIT COMPANY,
A CORPORATION,
DEBTOR.

CHICAGO JUNCTION RAILROAD COMPANY, A CORPORATION,
Petitioner,

vs.

A. A. SPRAGUE, BERNARD J. FALLON, TRUSTEES OF THE ESTATE OF THE CHICAGO RAPID TRANSIT COMPANY, A CORPORATION,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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SILAS H. STRAWN,
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THE DUNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Chicago Junction Railroad Company, by George Wharton Pepper, Silas H. Strawn, Ralph M. Shaw, and John D. Black, its attorneys, respectfully prays that a writ of certiorari issue to review the decree of the United

States Circuit Court of Appeals for the Seventh Circuit, entered in the above entitled cause on June 30, 1942 (a rehearing of which was denied July 22, 1942), affirming the decree of the United States District Court for the Northern District of Illinois, Eastern Division, entered July 12, 1941.

Summary and Short Statement of the Matter Involved.

The Circuit Court of Appeals, in a proceeding under Section 77B of the Bankruptcy Act, has held that a debtor-lessee of a wholly intrastate railroad may disaffirm the lease but must continue to hold possession of the railroad and operate it; and may do so not only free of all liability for rent in arrear and for past and future use and occupation but may charge all operating deficits to the lessor.

This obviously unjust result calls for the exercise of the supervisory powers of the Supreme Court of the United States to determine whether the Bankruptcy Court has not exceeded the limits of its jurisdiction no matter how elastic that jurisdiction may be.

Facts From the Record.

Chicago Rapid Transit Company, Debtor, an Illinois corporation subject to the regulatory jurisdiction of the Illinois Commerce Commission (R. 3, 24) engaged in the transportation of persons for hire by electric railway, in intrastate commerce only, filed its petition in proceedings for reorganization January 22, 1937.

The Trustees appointed upon that date under the petition succeeded Receivers of the same company appointed June 28, 1932, by the District Court for the Northern District of Illinois, in an equity proceeding.

From the appointment of the Receivers to the present time, either the Receivers or the Trustees (Respondents here) have been in possession of and have operated the

properties of the Debtor; the order of appointment in this proceeding directed the Trustees to continue operation of the property, assets and business taken over from the Receivers; and the Trustees are still operating the property under such order and the later judgment order of July 12, 1941, which was affirmed by the Circuit Court of Appeals and which is the subject of this Petition.

Part of the Debtor's properties are an elevated railway structure leased to Debtor and owned by petitioner. This was built by petitioner, at a cost of about $2,240,000 (R. 246) under the authority of a certain franchise ordinance passed March 16, 1903, by the City Council of the City of Chicago. This ordinance, among other things, authorized the construction by petitioner of an elevated railroad, upon the express condition (R. 413) that from its completion it should be permanently operated by the South Side Elevated Railroad Company (Debtor's predecessor) under lease or other arrangement between said two companies as a part or parcel of the road of South Side Elevated Railroad Company.

The elevated railroad when completed was leased by petitioner to Debtor's predecessor as required by the ordinance (R. 241). For over thirty-five years the public has been served by the operation of this railroad, under this lease, and under the regulation of the Illinois Commerce Commission.

The Receivers after taking possession of this leased property on June 28, 1932, for a period of two years and two months paid petitioner the full rental due under the lease, then ceased payments.

May 26, 1936 (R. 40), petitioner petitioned the court for an order directing the Receivers to pay it the rent then past due. An answer was filed and a reference of the petition to a Special Master was had.

The Receivers thereafter paid no rent and took no action either to affirm or reject the lease.

May 13, 1937, about four months after the appointment of the Trustees, they filed a petition for an order (R. 25) requiring petitioner to modify and revise the terms of the lease by reducing the amount of rental due thereunder and thereafter required to be paid under the terms of the lease, to a reasonable amount to be determined by the court.

Over a year later, September 27, 1938, the Trustees filed an amendment to the petition (R. 30) the amendment also requiring this petitioner to modify and revise the terms of the lease by reducing the amount of rental then due thereunder and thereafter required to be paid under the terms of the lease, to a reasonable amount to be determined by the court; and, in the alternative, that Trustees be authorized to abandon the operation of the leased property, subject to the approval of the Illinois Commerce Commission, substituting such bus or other service, if any, as the Commission may require.

July 12, 1941 (R. 324), nearly three years later, the Trustees filed a second amendment to their petition which continued the prayer for an order requiring petitioner here to modify and revise the terms of the lease by reducing the amount of rental to a reasonable amount to be determined by the court, and, in the alternative, that Trustees be authorized not to adopt but to reject the lease by filing a written election so to do, and that the court authorize them, if necessary, to continue operation until the physical abandonment of the property is approved by the proper authority, but solely for the account and risk of petitioner, as lessor.

The Trustees never made an unequivocal request for authority to reject the lease.

The District Court entered a judgment July 12, 1941

(R. 338), directing that the Trustees file a written election not to adopt but to reject the lease, and ordering that petitioner is not entitled after the date of the institution of the reorganization proceedings to recover from the trust estate any of the rent reserved in the lease (R. 339). The order further provided (R. 340) that the Trustees, after filing said written election, shall continue operation of elevated railway service over the leased property "not for the account of the trust estate but only for the benefit and account of the Junction (petitioner here), and then only until said Trustees shall be duly authorized to cease operation by reason either of said Junction taking over said operation or the physical abandonment of such operations being duly authorized."

July 21, 1942 (R. 343), petitioner filed its written motion under Rule 52(b) of Civil Procedure to vacate and amend said judgment. This was denied (R. 358).

The case involves the validity of this judgment, involves the right of the District Court for the Northern District of Illinois to disregard the Illinois statutes regulating a wholly intrastate elevated railroad in Chicago, and in violation of such statutes to enter a judgment, without the consent and approval of the Illinois Commerce Commission, affecting the properties and the intrastate service of such railroad.

The case also involves the right of the District Court to disregard the provisions of Sections 77A and 77B of the Bankruptcy Act and wrongfully applies them to a wholly intrastate elevated railroad serving a public need, contrary to the provisions of such statutes.

It also involves the liability of the debtor estate and its Trustees to pay rent in arrear, now in excess of $750,000, to petitioner under the lease of petitioner's entire properties, a wholly intrastate elevated railroad built in Chicago for the Debtor's predecessor lessee, and which petitioner

never had the right under the franchise authorizing its construction to operate.

It also involves the question whether the Receivers and Trustees of the Debtor in fact ratified and did not disaffirm the lease; and that petitioner is therefore entitled to recover the rent due under the lease.

It also involves the right of the District Court to confiscate petitioner's property by depriving it of its property and of its lease rentals and in addition to impose on petitioner the liability to pay to the debtor estate operating deficits, already aggregating nearly $800,000, and which will continue to be incurred: such liability being imposed on petitioner retroactively to February 1, 1937 (R. 339) on the theory that respondent's operations are in discharge of petitioner's duty of public operation. This duty does not exist; as petitioner's franchise, the ordinance of March 16, 1903, provided, as above pointed out, that the authority to petitioner to construct the elevated railroad was granted upon the express condition that it from its completion should be permanently operated by petitioner's lessee, as part of the road of petitioner's lessee.

Statement of the Basis Upon Which It Is Contended That This Court Has Jurisdiction to Review the Decree in Question.

The decree of the Circuit Court of Appeals was entered June 30, 1942 (R. 424). A petition for rehearing was filed within the time allowed by the rules of court (R. 441), and was overruled July 22, 1942 (R. 442).

Jurisdiction is invoked under Section 240(a), c. 229, Act of February 13, 1925; Section 1, 43 Stat. 938. 28 U. S. C. A., Section 347(a).

The Questions Presented and Reasons Relied on for Allowance of the Writ.

(1) The Circuit Court of Appeals has decided important questions of federal bankruptcy law which have not been, but should be settled by this court:

(a) Whether the power of the Federal Bankruptcy Court to authorize Trustees appointed under Section 77B to disaffirm a lease and terminate liability thereunder, may be exercised after the lapse of nine years (four and one-half years in equity receivership and four and one-half years in 77B) during which the receivers and subsequently the trustees did many things consistent only with affirmance of the lease.

(b) If we assume that the answer to (a) is in the affirmative, whether the power of the Federal Bankruptcy Court extends beyond the power to relieve the debtor of a burdensome lease and the payment of rent thereunder, and extends so far that in a proceeding upon debtor's petition for leave to abandon, the court may decree a *liability upon the lessor* for all operating deficits incurred by the trustees since their appointment and for any future operating deficits which they may incur.

(2) The Circuit Court of Appeals for the Seventh Circuit by affirming the District Court's decision in this case has decided an important question of local Illinois law in a way which conflicts with decisions of the State of Illinois, viz: that an operation of petitioner's property can be had on petitioner's account without approval of the Illinois public authorities. Under the recent ruling of the Illinois Supreme Court in *City of Geneseo* v. *Illinois Northern Utilities Company,* 378 Ill. 506 (1941), the Commission could not allow an independent operation on petitioner's account unless petitioner first should obtain a franchise from the City of Chicago permitting it to operate inde-

pendently. The decision is also in conflict with the order of the Illinois Commerce Commission entered October 3, 1934 (R. 413).

Petitioner has never received a certificate of convenience and authority from the Illinois Commerce Commission and as its franchise from Chicago was granted on the condition that its lessee (the predecessor of the respondent Trustees) should permanently operate the property as a part of the South Side Elevated System, it is clear that a separate operation of the petitioner's property for the account of petitioner not only frustrates the rule of the Geneseo case, but ignores the authority of the Illinois Commerce Commission.

(3) The petitioner has no standing before the Illinois Commerce Commission to request leave to abandon the lease: its franchise from the City of Chicago under the ordinance is a contract between the City and petitioner. The Commission could not change the terms of this contract, except with the consent of both parties.

SUPPORTING BRIEF.

Opinions Below.

The judgment order of the District Court and its conclusions of law are found in the accompanying Record at pp. 338 and 342, respectively. The majority opinion of the court below (R. 424) and the dissenting opinion of Judge Evans (R. 436) are in the record at the pages indicated, and are reported in 129 F. (2d) 1.

Concise Statement of the Grounds on Which Jurisdiction of the Court Is Invoked.

Jurisdiction is invoked under Section 240(a), c. 229, Act of February 13, 1925; Section 1, 43 Stat. 938; 28 U. S. C. A., Section 347(a). It is also invoked on the ground that there is a conflict between the majority opinion of the Circuit Court of Appeals and Judge Evans' dissenting opinion, and that Judge Evans' dissenting opinion is a correct statement of the facts and law involved. Also upon the ground that the majority opinion is probably in conflict with applicable decisions of this Court; and that the majority opinion does not give proper effect to applicable decisions of this Court.

STATEMENT OF THE CASE.

It is believed that the statement of "Facts from the Record" (page 2, *ante*) is a sufficient statement to show the material matters up to the entering of the judgment of the District Court.

Thereafter petitioner, on July 21, 1942 (R. 343), filed its written motion under Rule 52(b) of Civil Procedure to vacate and amend this judgment, which motion was denied (R. 358).

SUMMARY OF ARGUMENT.

There has been no effective rejection of the lease, and its provisions require payment for the use made of petitioner's property.

The Bankruptcy Court exceeded its jurisdiction.

The franchise under which the lease was made is unlawfully disregarded by the judgments.

The Illinois statute law has not been observed.

The judgments below are not authorized by the Bankruptcy Act.

The ordinance and lease contract are "in the public authority."

ARGUMENT.

There Has Been No Effective Rejection of the Lease.

At the threshold, petitioner urges that the lease was in fact ratified by the respondent Trustees long before any application was made to the trial court for leave to reject it; and that the Trustees may not, therefore, reject the lease, and the decree authorizing such rejection was erroneous.

It is clearly pointed out in the dissenting opinion of Judge Evans (R. 436) that there is a limitation or condition on the right of rejection of a lease, namely, *timely* action by the Trustees. The record shows, as his dissenting opinion states, that upon the appointment of the Trustees they were ordered to continue operation of the property, assets and business of the petitioner taken over from the Receivers, who had in fact paid without objection two years and two months of rent under the lease (R. 22) before ceasing to pay rent, and never rejected the lease nor took any steps for its rejection.

Four months after the appointment of the Trustees they filed a petition asking for a reduction of the rent to a reasonable amount to be determined by the Court (R. 21). Twenty months after their appointment they amended their petition (R. 30), still asking for a reduction of the rent by the Court, or, in the alternative, that the Trustees might abandon operation of trains over petitioner's structure subject to the approval of the Illinois Commerce Commission, substituting such bus or other service as the Commission might require.

July 12, 1941, four and one-half years after the appointment of the Trustees, they filed a second amended petition (R. 324), still asking for an order requiring petitioner to reduce the amount of rental to a reasonable amount to be

determined by the Court, and, in the alternative, that the Trustees may be authorized "not to adopt but to reject said lease", and thereupon, if necessary to prevent the discontinuance of passenger service over said elevated structure until its physical abandonment is approved by proper authority, to continue the operation of such service solely for account and risk of this petitioner.

The dissenting opinion points out that it is an incongruous inconsistency to direct a lessee to remain in possession of the property and charge the deficit to the lessor, and yet call such action a cancellation; that, on the contrary, the facts show a ratification of the lease by the Receivers and by the Trustees. The dissenting opinion says (R. 439 and 440):

> "It is quite inconceivable to think of a disaffirmance of a lease, yet leaving lessee in possession of the property and operating it. * * * Believing that the right to cancel the lease was lost, and also being convinced that there never was a cancellation of this lease, but merely a repudiation of the rental obligation therein, I think it should be held that the lessee is indebted to the lessor for the rent from 1932 to the present time."

There seems no other reasonable conclusion that can be reached from the facts in this record.

The Bankruptcy Court Exceeded Its Jurisdiction.

But assuming that it was within the power of the bankruptcy court to order a disaffirmance of the lease, yet the court lacked jurisdiction to impose the affirmative liability upon petitioner to assume and pay the deficits caused by the Trustees' operation over petitioner's structure.

The principle is stated by the Circuit Court of Appeals for the Second Circuit in *Gaston* v. *Rutland Railroad Company*, 35 Fed. (2d) 685, at 687:

> "They (the receivers) not only took advantage of their ability to end an existing contract, but undertook

to make a new one on terms which they dictated. They now seek to maintain their right to name the new terms, on the ground that they were bound by law to continue to operate their trains over the bridge and land. Yet this duty to operate their trains did not carry with it the right to use property of the Rutland Railroad in so doing on terms imposed upon the owner without its consent."

In *Trustees of Dartmouth College* v. *Woodward,* 4 W. 518, the court said at 663:

> "A charter is a contract, to the validity of which the consent of both parties is essential, and, therefore, it cannot be altered or added to without such consent."

And in *Farrington* v. *Tennessee,* 95 U. S. 679, the court said at page 689:

> "We cannot so hold, without interpolating into the clause a term which it does not contain. This we may not do. Our duty is to enforce the contract as we find it, and not to make a new one."

It is submitted that the court was without power to require the petitioner to pay the operating deficits.

The Franchise May Not Be Disregarded by the Trustees.

Petitioner built the elevated structure covered by the lease in question under a mandatory ordinance passed by the City of Chicago March 16, 1903, which granted a franchise to petitioner upon condition that after the structure was built it should be permanently operated by the South Side Elevated Railroad Company (respondents' predecessor) as a part and parcel of the South Side Elevated Railroad Company. The terms of the ordinance grant were accepted by the lessee (R. 257) which operated the road until it was taken over in January, 1924 by the debtor (R. 22) which expressly assumed and agreed to pay all obligations and liabilities of the South Side Elevated Railroad Company including the obligations of this lease; and

the debtor continued the operation of the property until the Receivers of the United States District Court took it over June 28, 1932 (R. 7).

The lessees acceptance of the grant of this ordinance cannot be abandoned by it; certainly not without authority of the regulatory body—the Illinois Commerce Commission —in the manner provided by the Illinois Statutes hereinafter referred to.

In *Broad River Power Company* v. *South Carolina,* 281 U. S. 537, the court reviewed a judgment of the Supreme Court of South Carolina which directed the grantees of a franchise to continue the operation of an electric street railway system. The Broad River Power Company and the Columbia Railway Company had consolidated under an Act of the State legislature; had accepted franchises to operate an electric power system and a street railway system but sought to discontinue the operation of the railway on the grounds that it was being run at a loss and that its franchise was separate from that of the Power Company. The Supreme Court of South Carolina directed the resumption of operation of the street railway.

The opinion of this Court holds that a franchise accepted, as was the franchise in the case now presented, cannot be disregarded and abandoned by the franchise holder.

And in *Frost* v. *Corporation Commission,* 278 U. S. 515, the court said, at 519:

> "The right to operate * * * as provided by the Oklahoma statute, is not a mere license, but a franchise, granted by the state in consideration of the performance of a public service."

Hence not to be abandoned by the franchise holder.

The Judgments Violate the Statute Law of Illinois.

There is no question that debtor is a public utility subject to the regulatory jurisdiction of the Illinois Commerce Commission. This was stated in the petition for reorganization (R. 3) and in the subsequent petitions filed by debtor (R. 24, 31, 324).

The pertinent provisions of the Illinois statutes are found in Illinois Revised Statutes 1941, Chapter 111⅔. This chapter gives the Illinois Commerce Commission complete control over local utilities engaged in intrastate commerce in Illinois and requires the approval of the Commission of all changes in operating agreements and arrangements between public utilities. Chapter 111⅔, Section 49a provides:

> "No public utility shall abandon or discontinue any service without first having secured the approval of the Commission. In granting its approval, the Commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest."

Other sections of the statute elaborate the prohibition of Section 49a: Section 27, and Section 10.

Section 65 of the Judicial Code (U. S. C. A., Title 28, Section 124) provides:

> "Whenever in any cause pending in any Court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the state in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof."

This court has said in *Palmer* v. *Massachusetts,* 308 U. S. 79, 84-85:

> "The dependence of local communities on local railroad service has for decades placed control over their

curtailment within the regulatory authorities of the states. Even when the Transportation Act of 1920 gave the Interstate Commerce Commission power to permit abandonment of local lines when the overriding interests of interstate commerce required it, *Colorado* v. *United States,* 271 U. S. 153, this was not deemed to confer upon the commission jurisdiction over curtailments of service and partial discontinuances. *Public Convenience Application of Kansas City Southern Ry.,* 94 I. C. C. 691; see *Proposed Abandonment, Morris and Essex Co.,* 175 I. C. C. 49. *If this old and familiar power of the states was withdrawn when Congress gave district courts bankruptcy powers over railroads, we ought to find language fitting for so drastic a change.*" (Italics ours.)

The Judgments Are Not Authorized by the Provisions of Sections 77A or 77B of the Bankruptcy Act.

Section 77A, U. S. C. A., Title 11, Sec. 206 provides:

"In addition to the jurisdiction exercised in voluntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in section 77B of this Act."

Section 77B(b) (6) (U. S. C. A., Title 11, Section 207(b) (6)) provides:

"(b) A plan of reorganization within the meaning of this section * * * (6) may reject contracts of the debtor which are executory in whole or in part, including unexpired leases *except contracts in the public authority.*" (Italics ours.)

Section 77B(e) (2) (U. S. C. A., Title 11, Section 207(e) (2)) provides:

"In case the debtor is a utility subject to the jurisdiction of a regulatory commission or commissions or other regulatory authority or authorities, created by the laws of the State or States in which the properties of the debtor are operated, a plan of reorganiza-

tion shall not be confirmed until (a) it shall be submitted to each such commission or authority having regulatory jurisdiction over the debtor, (b) an opportunity shall be afforded each such commission or authority to suggest amendments or objections to the plan, and (c) the judge shall consider such amendments or objections at a hearing at which each such commission or authority may be heard. In case the debtor is a public utility corporation wholly intrastate in character, no court shall approve any plan of reorganization if the regulatory commission of such State having jurisdiction over such public utility certifies that the public interest is affected by said plan, unless said regulatory commission shall first approve of said plan as to the public interest therein and the fairness thereof."

It seems clear that a contract which affects the public interest, or is in the public authority, may not be authorized to be rejected by the debtor, particularly where the debtor is a public utility corporation wholly intrastate in character subject to the jurisdiction of a State regulatory commission, until after such rejection has had the approval of the State Commission.

The court below refused to accept this view and it is respectfully submitted that its refusal so to do was error.

The Ordinance and Contract of This Lease Are Clearly "In the Public Authority."

The federal statutes are as follows:

Chandler Act, Chapter X, Sec. 116 (U. S. C. A., Title 11, Sec. 516).

Chandler Act, Chapter X, Sec. 216 (U. S. C. A., Title 11, Sec. 616).

Section 77B, 77B, subsections (b)(6) and (c)(5), Bankruptcy Act (U. S. C. A., Title 11, Sec. 208).

These are the sections of the federal bankruptcy statute which petitioner believes were intended to avoid conflict

between the bankruptcy power of the federal courts and the power of the public authorities of the forty eight states over matters of purely intrastate commerce. They forbid the rejection of contracts "in the public authority."

Chapter X, Section 116 (U. S. C. A., Title 11, Section 516):

> "Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon him and the court (1) permit the rejection of executory contracts of the debtor, *except contracts in the public authority.*" (Italics ours.)

Section 216 of Chapter X of the Chandler Act (U. S. C. A., Title 11, Section 616) provides:

> "A plan of reorganization under this chapter * * * (4) may provide for the rejection of any executory contract *except contracts in the public authority.*" (Italics ours.)

The ordinance of the City of Chicago (R. 413), granted petitioner authority to construct an elevated railroad solely "upon the express condition that said elevated railroad * * * shall from its completion be permanently operated by said South Side Elevated Railroad Company under lease or other arrangement between the said two companies as a part or parcel of the road of said South Side Elevated Railroad Company". It was part of the track elevation ordinances of the City of Chicago; was adopted March 16, 1903; and was in itself a comprehensive program which required the elevation of railroad tracks of the Union Stock Yard & Transit Company of Chicago, the Chicago & Western Indiana Railroad Company, the Pittsburgh, Fort Wayne & Chicago Railway and its lessee the Pennsylvania Company, the Chicago, Rock Island & Pacific Railway Company, the Lake Shore & Michigan Southern Railway Company, among others, for the separation of the grades of streets and railroad tracks at street crossings throughout the city, all for the safety and benefit of the public.

The rights and privileges granted by the ordinance to the Chicago Junction Railroad Company to construct and maintain its elevated railroad were upon the express condition and agreement that the elevated road authorized to be constructed should, from its completion, be permanently operated by the South Side Elevated Railroad Company under lease or other arrangement between the said two companies as a part and parcel of the road of the South Side Elevated Railroad Company, a going elevated road in the City of Chicago; and the South Side Elevated accepted this condition.

When the South Side Elevated road consolidated with other elevated railroads of Chicago to form the Chicago Rapid Transit Company on January 8, 1924, this was pursuant to the laws of the State of Illinois (R. 22).

When the respondents here filed a petition for the reduction of rent on May 13, 1937 (R. 21) they recited in the petition that "your petitioner serves the public convenience and necessity of large numbers of persons within the City of Chicago, Illinois, and adjacent suburbs within the State of Illinois; * * * that your petitioner cannot serve such public convenience and necessity at its present efficiency if your petitioner is required to pay the rentals now due", etc. (R. 24).

When the Court entered its order approving the filing of a petition for reorganization it authorized respondents "to continue with the supplemental proceedings now pending before the public utilities regulatory commission of the State of Illinois" (R. 15).

The City of Chicago retains control over the use of its streets, and unless operation is continued over respondent's lines by the Chicago Rapid Transit Company, or by respondents, the franchise granted by the ordinance of March 16, 1903 will terminate. (*City of Geneseo* v. *Illinois Nothern Utilities Company,* 378 Ill. 506.)

The leasing of lines of railway of one carrier by another is so affected with the public interest that such leases cannot be entered into without the approval of the Illinois Commerce Commission. Nor can they be operated or abandoned by the lessee without the consent and approval of the Illinois Commerce Commission. Rejection by respondents of petitioner's lease would ordinarily result in the abandonment of operations over petitioner's structure.

It seems clear from this background, from these statutory provisions, and from these authorities, that this lease from petitioner to respondents' predecessor is a lease "in the public authority" and as such may not under the law be amended or rejected, except with the approval of the Illinois Commerce Commission.

Conclusion.

It is respectfully submitted that in the matters presented by this petition, the judgments of the courts below were erroneous and should be corrected by this court.

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A. A. SPRAGUE, BERNARD J. FALLON, TRUSTEES OF THE ESTATE OF THE CHICAGO RAPID TRANSIT COMPANY, A CORPORATION,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 465.

IN THE MATTER OF
CHICAGO RAPID TRANSIT COMPANY,
A CORPORATION,
DEBTOR.

CHICAGO JUNCTION RAILROAD COMPANY,
A CORPORATION,
Petitioner,

vs.

A. A. SPRAGUE, BERNARD J. FALLON, TRUSTEES OF THE ESTATE OF THE CHICAGO RAPID TRANSIT COMPANY, A CORPORATION,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

THE MATTER INVOLVED.

A "short statement of the matter involved" should be somewhat longer than that contained in the petition if it is to summarize accurately the holding of the Circuit Court of Appeals, viz.: that the bankruptcy court has power to authorize and direct its trustees, appointed under Section 77B of the Bankruptcy Act for an intrastate elevated

railroad, to reject the burdensome lease of a branch line and to require the trustees to continue service thereafter over the branch line, not for the account of the estate but only for the benefit and account of the lessor, and then only until the trustees shall be duly authorized by the state regulatory body to cease operation by reason either of the lessor taking over operation or the physical abandonment of such operation, the trustees to surrender possession upon either of such events, and the lessor to recover after the date of the institution of the reorganization proceedings not the contractual rental but only such amount, if any, as may be found due on an accounting by the trustees on the basis of having operated the property for the account of the lessor.

ADDITIONAL STATEMENT OF THE CASE.

We deem an additional statement also necessary to correct inaccuracies or omissions in petitioner's statement of "Facts from the Record" which stands as its statement of the case. (Petitioner's Supporting Brief, p. 10.)

Contrary to the repeated assumption in the petition (pp. 3, 5, 6, 7) that the decision below involves a period of time extending back to September, 1934, this case actually involves only the period since January 22, 1937, on which date the debtor filed its petition for reorganization under Section 77B. In the prior equity receivership case a special master's report was filed recommending that prereceivership rentals be allowed as a general claim and that unpaid rentals during part of the receivership be allowed as administration expenses (R. 53). No question of rejection of the lease was involved and the evidence relating to the allocation of expenses and revenues between the leased line and the rest of the system was not nearly so complete as that later offered in the reorganization case. Objections were filed to this report by the receivers (R. 37) and the report and objections were later transferred to the reorganization case (R. 40). There the entire matter was again referred to the special master to be reconsidered by him in connection with the evidence taken under the trustee's petition filed May 13, 1937 (R. 40). This portion of the reference relating to the situation during the receivership case is still pending before the master and is in no way involved in this case (R. 306-7).

Petitioner's statement of the case also seeks to give the impression of great delay between the institution of reorganization proceedings for the debtor and the trustees' actual election to disaffirm the lease made under the court's

order. The facts are as follows: The debtor's petition for reorganization was filed January 22, 1937 (R. 2); temporary trustees were appointed January 27, 1937 (R. 11); by an order entered on that date, amended March 2, 1937, the trustees were allowed until September 1, 1937 (unless the time were further extended), to adopt or reject leases whether made by the debtor, or the receivers, or whether affirmed or adopted by the receivers, the election to be made by written election filed in the clerk's office, and no conduct, user or payments by the trustees in the meantime were to conclude the trustees or constitute an election to adopt (R. 230-1). Extensions of time were duly ordered by the District Court until after the election to disaffirm filed by the trustees July 31, 1942 (R. 232, 271), and, in fact, as to other leases, until the present time. A permanent trustee* for the debtor was appointed March 2, 1937 (R. 271), and on May 13, 1937, he filed his original petition against The Chicago Junction Railroad Company as respondent, alleging that the number of persons riding on the Junction branches had steadily decreased within recent years, that expenses of operation had increased, that the branches were being operated at a loss principally due to the large amount of rental required to be paid, that such rental was unconscionable, excessive, and oppressive to the estate, and that if the rental under the lease was not reduced to a reasonable amount it would be necessary for the trustee to reject the lease. The trustee asked that an order be entered requiring the Junction to modify the lease by reducing the rental, and for general relief (R. 23-5).

On September 27, 1938, as partially stated in the Junction's petition for certiorari (p. 4), the trustee filed an amendment to his original petition. This stated figures showing the heavy operating losses on the Junction

* A. A. Sprague was sole permanent trustee from March 2, 1937 to March 31, 1941, when Bernard J. Fallon was appointed co-trustee. (R. 271.)

branches, and added to the existing prayers for reduction in rental and general relief, an alternative request that the trustee be allowed "to abandon the operation of said branches subject to the approval of the Illinois Commerce Commission * * * and thereupon to disaffirm and abandon said lease" (R. 30-1).

At no time did the Junction press for hearing of the matter. On the contrary, its counsel stated before the special master that he was content to wait until the general questions of the reorganization had been determined (R. 114).

Throughout the hearings before the special master the trustees urged that the lease could be and should be disaffirmed without prior approval of the Illinois Commerce Commission and on September 4, 1940, after the close of the hearings, moved to amend the prayer for relief accordingly (R. 338). Following the special master's recommendation made in his supplemental report filed October 11, 1940 (R. 325-6), such amendment was allowed to be made by the order of July 12, 1941 (R. 338-9).

SUMMARY OF ARGUMENT.

I. There has been a timely and effective rejection of the lease.

II. The bankruptcy court did not exceed its jurisdiction in applying the "net earnings" rule.

III. No franchise is being disregarded by the trustees.

IV. The judgment does not violate the statute law of Illinois.

V. The judgment is authorized by Sections 77A and 77B of the Bankruptcy Act.

VI. No contract "in the public authority" is involved.

ARGUMENT.

Since the lease is now conceded to be burdensome to the trust estate (Petition for Certiorari, p. 7), it is the trustees' position that on ordinary principles of bankruptcy law the lease has been properly disaffirmed, the reasons urged by petitioner against such disaffirmance having no substantial validity. But before taking up petitioner's several points for specific answer we would point out what its contentions really amount to—that the lessor-petitioner and in turn the holders and guarantors of its first mortgage bonds (the only persons really interested in the petitioner (R. 103-4, 236)) are entitled to preferential treatment in the reorganization of Chicago Rapid Transit Company at the expense of the holders of first mortgage bonds covering various sections of Rapid Transit's owned lines. The petitioner's bondholders have between themselves and the trust estate of Rapid Transit an indenture of lease as well as an indenture of mortgage, and their real contention is that because of the lease they are entitled to receive their stipulated rental, and in turn the mortgage bond interest, despite the extremely burdensome character of the lease.

I.

There Has Been a Timely and Effective Rejection of the Lease.

We are only concerned in this case with what has happened in the reorganization proceedings with respect to the lease in question. Payment of rent by the prior equity receivers or action or nonaction by them with respect to the lease can have no effect upon the power of the bankruptcy court to order its trustees to reject the burdensome

lease. Section 77B(c)(5) of the Bankruptcy Act (U. S. C. A., Title 11, section 207(c)(5)); *In re 211 East Delaware Place,* 76 F. (2d) 834, 836 (C. C. A. 7, 1935); cf. *Gross* v. *Irving Trust Co.,* 289 U. S. 342 (1933).

So far as the reorganization proceedings are concerned, the permanent trustee acted within two months and eleven days of his appointment (R. 21, 271). His original petition alleged that the lease was unprofitable and burdensome, asked that the rent be reduced, stated that if the rent were not reduced the lease would be rejected, and prayed for general relief (R. 25). This was a realistic approach to the problem based upon the experience of railroad reorganizers where the practical consequence of a rejection has frequently been a new lease at a lower rental. 6 University of Chicago Law Review, pp. 698-700 (1939).

Later the prayer of the petition was twice amended, but as the master's report on the last amendment (R. 325-6) makes clear (and without objection from petitioner) there was never any deviation at the trial of the case from the theory spelled out in the last amendment to the prayer—that the lease should be disaffirmed without first presenting the matter to the Illinois Commerce Commission (R. 324)—which theory was always within the scope of the prayer for general relief.

Not only did the trustees' original petition make it plain that the lease would be rejected unless the rent was reduced, but in its answer filed June 8, 1937 the Junction, in effect, recognized these alternatives and urged the adoption of the lease and the payment of the rent (R. 26-8). From then on the Junction showed no disposition to press the matter. Its counsel stated before the special master:

> "That, so long as the whole traction question was in the hands of the court, and this necessarily would have to be delayed when that comes to a head, that it would hardly do anything, perhaps, but impose ourselves, to go in and try to throw Judge Wilkerson's

> course off to one side long enough to determine the question of this lease." (R. 114.)

The trustee never varied from his original position that the lease was burdensome and the rental unconscionably high. No rent was ever paid during the reorganization proceedings.

While time passed the Junction had its remedies, but it did not seek them, and it may not now claim that the equities are tipped in its favor by lapse of time. This Court stated in *Philadelphia Co.* v. *Dipple*, 312 U. S. 168, 174 (1941):

> "If, in the opinion of the officers of the underlying companies [the lessors], a reasonable time has expired those companies are not without redress. They may declare a forfeiture of the leases and abrogate the agreements for nonperformance on the part of the trustees or, they may apply to the District Court to compel an election by the trustees, to affirm or disaffirm."

In *Texas Co.* v. *Chicago & A. R. Co.*, 126 F. (2d) 83 (C. C. A. 7, 1942), an equity receivership case, the right of disaffirmance was held to persist under orders extending the time, not only during nine years of receivership but, as respects a purchaser of the property at judicial sale, for nine years after such sale.

Petitioner also mentions the reference in the dissenting opinion to the supposed inconsistency of directing a lessee after disaffirmance to remain in possession of the property and charge the deficit to the lessor. We believe that a brief analysis of the rights and duties of the parties should disprove the existence of any inconsistency.

The lessor and lessee are governed not only by the lease but by the character of the property leased. The contract of lease says that for the use of the property certain money shall be paid; the Illinois statute says that until the Commission acts, railroad operations must continue. This last, so far as the relative rights of the lessor and

the lessee are concerned, means no more than that until the Commission acts the lessor cannot get back its property, which by the lease was devoted to the public use many years ago, unless it re-enters and operates the property. But that fact should not make its contract rights any less subject to readjustment under the bankruptcy laws than those of the bondholders of the Rapid Transit Company who devoted their property to the use of the lessee corporation and who now likewise cannot realize in full upon either their money or upon the property mortgaged to secure its repayment.

The bankruptcy law covers the reorganization of public utilities and specifically provides that leases may be rejected. If a lease may not be rejected unless a state commission first permits physical abandonment of operations by the lessee, then there has been added to the law something which the Congress did not enact and which in effect nullifies the right to reject and disaffirm.

Even though possession of the property has to be retained physically after disaffirmance by virtue of the lessor's refusal or inability to continue operation of its public utility property, if the trust estate relinquishes all claim to the lease and rejects all benefit under the lease then the lease as a contractual obligation is at an end. It is then "no case of the employment of the property of another for one's own benefit." *Quincy, etc. R. Co.* v. *Humphreys,* 145 U. S. 82, 101 (1892); *Green* v. *Finnigan Realty Co.,* 70 F. (2d) 465, 466 (C. C. A. 5, 1934); *In re Connecticut Co.,* 95 F. (2d) 311, 316 (C. C. A. 2, 1938).

The foregoing principles have been enacted as a part of the railroad reorganization section of the Bankruptcy Act where it is provided (Section 77(c)(6), U. S. C. A., Title 11, sec. 205(c)(6)):

> "(6) If a lease of a line of railroad is rejected, and if the lessee, with the approval of the judge, shall elect no longer to operate the leased line, it shall be the duty

> of the lessor at the end of a period to be fixed by the judge to begin the operation of such line, unless the judge, upon the petition of the lessor, shall decree after hearing that it would be impracticable and contrary to the public interest for the lessor to operate the said line, in which event it shall be the duty of the lessee to continue operation on or for the account of the lessor until the abandonment of such line is authorized by the Commission in accordance with the provisions of section 1 of Title 49."

This language to which we refer merely by way of analogy has been considered to be no more than a codification of pre-existing equity receivership principles. *In re N. Y. N. H. & H. R. Co.,* 26 F. Supp. 18 (D. C., Conn., 1939) (affirmed *sub nomine Palmer* v. *Warren,* 108 F. (2d) 164 (C. C. A. 2, 1940) and affirmed *sub nomine Warren* v. *Palmer,* 310 U. S. 132).

There is, however, a closer analogy from the railroad cases, for there this Court has recognized that there may be the rejection of a lease without abandonment of service, *Warren* v. *Palmer,* 310 U. S. 132 (1940), even though permission to abandon local service may be obtained only from the State Commission. *Palmer* v. *Massachusetts,* 308 U. S. 79 (1939).

II.

The Bankruptcy Court Did Not Exceed Its Jurisdiction in Applying the "Net Earnings" Rule.

Petitioner asserts that the bankruptcy court lacked jurisdiction to impose affirmative liability upon petitioner for deficits caused by the trustees' operation over its structure, but supports such assertion merely by the citation of three cases.

Only the first of these, *Gaston* v. *Rutland R. Co.,* 35 F. (2d) 685 (C. C. A. 2, 1929), dealt with a railroad lease and there the leased property, a bridge, did not constitute in

any sense a separate division, but was located upon a branch line of the Central Vermont over which operations were conducted on each side of the bridge property. Since the receivers intended to operate the branch at either end of the bridge for the benefit of their estate, and could not operate it without crossing and using the bridge, there could not be a rejection of the benefit of the bridge contract. The "net earnings rule" is not applicable to bridges. *North Kansas Bridge Co.* v. *Leness,* 82 F. (2d) 9 (C. C. A. 8, 1936). In the later case of *In re Connecticut Co.,* 95 F. (2d) 311, 316 (C. C. A. 2, 1938), the same court that decided the *Gaston* case held that an equity receiver of public utility property might reject a lease although operations might have to be carried on for some time, at the lessor's account.

The other two cases cited, *Trustees of Dartmouth College* v. *Woodward,* 4 Wheat. 518, and *Farrington* v. *Tennessee,* 95 U. S. 679, held that subsequent state legislation may not impair the obligation of prior contracts. It is, however, inherent in the very nature of bankruptcy administration that contract rights must be scaled down, altered or completely abrogated. *Continental Bank* v. *Chicago, R. I. & P. Ry. Co.,* 294 U. S. 648 (1935); *Van Huffel* v. *Harkelrode,* 284 U. S. 225 (1931).

On principle and authority the portion of the order appealed from regarding the accounting properly related back to the beginning of the reorganization proceedings. Under well settled principles of railroad receivership law, upon rejection of a lease the receivership estate is not required to pay the stipulated rental from and after the date of receivership but is required only to account to the lessor for the profit or loss from operations,—the so-called "net earnings rule." *Quincy, etc., Ry. Co.* v. *Humphreys,* 145 U. S. 82 (1892); *Westinghouse Electric & Mfg. Co.* v. *Brooklyn Rapid Transit Co.,* 6 F. (2d) 547 (C. C. A. 2, 1925); *American Brake Shoe & Foundry Co.* v. *N. Y. Rys. Co.,* 282 Fed. 523, 529 (C. C. A. 2, 1922); 46 Harvard Law Review at page 1134 (1933). The rule is recognized in

the railroad section of the Bankruptcy Act, Section 77 (c) (6), 11 U. S. C. A. section 205 (c) (6), quoted above (p. 10).

Petitioner is a railroad corporation (R. 240) and is a public utility within the definition of Section 10 of the Illinois Public Utility Act, including "every corporation * * * that now or hereafter: (a) may own within the State, directly or indirectly, for public use, any plant, equipment or property * * * used in connection with the transportation of persons or property * * *." (Illinois Revised Statutes 1941, Chap. 111⅔, sec. 10.)

In the equity receivership cases where lessors are very seldom in a position to resume the operation of branch lines, the decisions have quite uniformly required the receivers of the lessee, who may have to operate the road for some time, merely to account to the lessor for the profit or loss from operations. *Quincy, etc., R. Co.* v. *Humphreys,* 145 U. S. 82, 101 (1892); *United States Trust Co.* v. *Wabash Ry. Co.,* 150 U. S. 287, 301 (1893); *American Brake Shoe & Foundry Co.* v. *N. Y. Rys. Co.,* 282 Fed. 523, 528 (C. C. A. 2, 1922). If there are no net earnings, the lessor is chargeable with any resulting loss. *Penna. Steel Co.* v. *N. Y. City Ry. Co.,* 198 Fed. 721 (C. C. A. 2, 1912); *In re Connecticut Co.,* 95 F. (2d) 311 (C. C. A. 2, 1938).

III.

No Franchise Is Being Disregarded by the Trustees.

Petitioner urges that the provisions of the ordinance of the City of Chicago passed March 16, 1903 prevent the disaffirmance of the lease apparently because of a supposed condition enforceable by the City. The actual language of the ordinance is:

> "The rights and privileges by this section vested in said Chicago Junction Railroad Company are granted upon the express condition and agreement that said elevated railroad hereby authorized to be constructed by said Chicago Junction Railroad Company shall from its completion be permanently operated by said South Side Elevated Railroad Company, under lease or other

arrangement between the said two companies as a part or parcel of the road of said South Side Elevated Railroad Company." (R. 413.)

There are several answers to petitioner's contention, aside from the fact that the case cited by it, *Broad River Power Company* v. *South Carolina*, 281 U. S. 537 (1930) involved no question of insolvency, confiscation, or the disaffirmance of any lease.

In the first place, there could not as a matter of law be any valid requirement of such "permanent" operation, since all the other South Side Elevated franchise ordinances were of limited duration. The ordinances covering the main line of the South Side Elevated Railroad Company (the debtor's predecessor) which were granted in 1888, 1891, and 1892, and the other parts of the 1903 ordinance relating to the Englewood and Normal Park branches and a third track on the main line all expired by their terms on March 26, 1938 (R. 416). Since the main line ordinances ran for a limited period of time, the Junction cannot claim the right to operate "permanently" as a part of the system beyond the expiration date of such ordinances. *Blair* v. *City of Chicago*, 201 U. S. 400, 485-6 (1906).

The language of the ordinance itself negatives any intention that the lease between the parties could be the only possible status; rather it expressly suggested possibility of "other arrangement." Then, too, the parties to the lease did not so regard the City's act. Their lease provided that the lessor, on default, might terminate it and enter upon and possess the leased property (R. 254-5). Obviously, the lessor could not legally have done so if the ordinance restricted use solely to the debtor.

Finally the City, the direct beneficiary of whatever condition there is in the 1903 ordinance has expressly recognized the power of the bankruptcy court to direct a disaffirmance of the lease. The new ordinance passed by the

City Council June 19, 1941 recognizes that the lease in question is

> "subject to any orders which may be entered in the proceedings for reorganization * * * now pending in the District Court of the United States * * *, or by the Illinois Commerce Commission." (R. 378.)

and that the obligation of the New Company to assume leases, including the Junction lease, is only

> "to the extent and in the manner provided by order or decree of the Federal Court having custody of the properties of the Debtor." (R. 376.)

IV.

The Judgment Does Not Violate the Statute Law of Illinois.

In support of its point that the judgment violates the statute law of Illinois, petitioner quotes Section 49a of the Illinois Public Utility Act, providing that "no public utility shall abandon or discontinue any service without first having secured the approval of the Commission." The point is answered completely in the opinion below in language which we cannot improve upon. We quote:

> "The order directed the trustees to reject the lease. Its plain purport was that thereafter the trustees should continue operation of the leased premises, not as lessees but wholly free from the obligations of the lease, temporarily, until either respondent should take back its property, as it had a right to do, or the state should grant leave to abandon the operation. To our mind this reflected a nice distinction upon the part of the court between what it might properly do and what it might not. It could reject the lease and free the estate of the burden thereof. It could not order abandonment of service. It could not make a new contract between the parties. The court rightfully protected the estate by cancellation and equally properly protected the rights of lessor by providing that until and

unless it should take over its property, the same should be operated for its account, a practice approved by the court in *Palmer* v. *Webster,* 312 U. S. 156. And it equally adequately protected continued operation as required by the utility laws of Illinois until the proper authorities should see fit to relieve both lessor and lessee of necessity of further operation. This was not creation of a new contract or modification of an old one. It was cancellation of contractual liability with preservation of the public operation as required by the laws of Illinois until the lessor could take over, or until relief of both parties from such obligation by the Illinois Commission." (R. 430.)

Recent decisions of the Supreme Court of Illinois support this analysis, holding that the Illinois Commission has no power to modify burdensome contracts between utilities, *Commerce Commission* v. *E. St. Louis & C. Ry. Co.,* 361 Ill. 606, 611-3 (1935), and that the Commission generally has no powers except those expressly granted to it by statute. *Lambdin* v. *E. St. Louis & C. Ry. Co.,* 352 Ill. 104 (1933). The case of *City of Geneseo* v. *Illinois Northern Utilities Company,* 378 Ill. 506, 527 (1941), cited by petitioner, merely holding that a public utility whose franchise has expired may not continue operations in a city which has established an adequate municipally owned utility against the wishes of such city, does not support petitioner's position; on the contrary, it strengthens the analysis above quoted, for the case also holds (p. 527) that said Section 49a affects only the operation of the utility.

V.

The Judgment Is Authorized by Sections 77A and 77B of the Bankruptcy Act.

In the argument of petitioner's supporting brief (pp. 16-17), the point is made that the judgments are not authorized by the provisions of Sections 77A and 77B of the Bankruptcy Act because the lease is a contract "in the public authority." Although the point is not raised under "Questions Presented" in the petition proper as the rules require (Rule 38), we shall answer it here and under the next heading.

Petitioner quotes the language of Section 77B (b)(6) and (e)(2) (U. S. C. A. Title 11, Section 207 (b)(6), (e)(2)) relating to plans of reorganization. These clauses have no applicability for the reason that the disaffirmance in question was ordered by the bankruptcy court under the provisions of clause (c)(5), reading "* * * the judge * * * may direct the rejection of contracts of the debtor executory in whole or in part," which covers leases as well as contracts. *Philadelphia Co.* v. *Dipple*, 312 U. S. 168, 174 (1941). No exception is made in this clause of contracts in the public authority, but even if such an exception were contained in the clause just quoted, there would still be lacking a contract in the public authority.

VI.

No Contract "in the Public Authority" Is Involved.

Petitioner now refers to Section 116 of Chapter X of the Chandler Act (U. S. C. A. Title 11, Section 516), excepting "contracts in the public authority" from the power of disaffirmance, but the reorganization proceedings of Chicago Rapid Transit Company were instituted under Section 77B long before the enactment of the Chandler

Act. Furthermore, the ordinance of 1903 referred to by petitioner could not very well require "permanent operation" by the lessee beyond the term of its main line and other franchise ordinances, and even if it could, the City of Chicago instead of insisting upon continued operation has adopted an ordinance which releases any right upon its part to insist upon such construction of the earlier ordinance (See pp. 14, 15, *ante*).

However, even if the Chandler Act should be considered applicable, we believe it should be apparent that petitioner is contending for entirely too broad an application of the phrase "in the public authority." There is here involved a lease between two public utility corporations. In a case where the contract is a lease of municipally owned property under a contract to operate, the question of physical abandonment and rejection of the benefit and change in the financial arrangement between the parties necessarily go hand in hand. But where, as in this case, the lease of privately owned property is not a contract directly with a municipality, but is a lease from another public utility, there is not the same reason for prohibiting the bankruptcy court from revising the rights of the parties.

If petitioner is right in its construction, then there is no authority anywhere which could prevent a lessor of utility property from securing, as petitioner seeks to secure here, a preferential treatment at the expense of other creditors. As pointed out above (*ante*, p. 16) the Illinois Public Utilities Law contains no provision for relief from burdensome contracts and leases, and even if the Commission could give such relief its efforts would be thwarted by Section 116 of the Chandler Act as petitioner construes it. The exception is absolute in its terms. If a particular contract is "in the public authority," there is no provision either in Section 116 relating to the powers of the court prior to the approval of any plan, or in Section 216 providing what a plan of reorganization may contain, by

which there may be any rejection of such a contract either by the court under the first section, or by the provisions of the plan under the second section.

The construction which the Junction contends for obviously is not necessary in order to protect public authorities in the cases where they really need protection, but would furnish lessors such as petitioner with a shield against the powers of the bankruptcy court to which they are not logically entitled, and which the drafters of Chapter X certainly never intended.

Conclusion.

It is respectfully submitted that the petition for a writ of certiorari in this matter should be denied.

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